

ORDERED.

**Dated: March 31, 2022**



Catherine Peek McEwen  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
www.flmb.uscourts.gov

In re:

Robert Zausner and Eric Zausner,

Case No. 8:22-bk-01202-CPM

Chapter 7

Debtors. /

**ORDER GRANTING EMERGENCY MOTION TO ENFORCE AUTOMATIC STAY**

THIS CASE came on for consideration of the Debtors' filing of a copy of an order (the "Order Denying Stay Relief") (Doc. No. 9) entered in a state court eviction action (the "State Court Action")<sup>1</sup> and their Emergency Motion to Enforce Automatic Stay (the "Motion") (Doc. No. 11). The Court takes judicial notice of the docket in the State Court Action. The docket reflects that on March 24, 2022, the Debtors filed in that case a motion to stay the eviction proceeding, together with a copy of their bankruptcy petition with a date stamp showing that they filed the petition that same day. On March 29, 2022, the judge in the State Court action entered the Order Denying Stay Relief, an Order Granting Plaintiff's Motion for Immediate Default, and a Judgment for Possession. On March 30, 2022, the clerk issued a Writ of Possession.

The automatic stay in this bankruptcy case arose on March 24th, the day the Debtors filed their petition.<sup>2</sup> An exception to the stay exists to permit a landlord to continue a residential eviction if the

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<sup>1</sup> *PAC Crosstown Walk, LLC v. Zausner*, Case No. 22-CC-008378, filed in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida.

<sup>2</sup> 11 U.S.C. § 362(a).

landlord “has obtained *before* the date of the filing of the bankruptcy petition, a judgment for possession.”<sup>3</sup> However, the judgment at issue here was not entered in the State Court Action until days *after* the petition date. Thus, this exception does not apply here.<sup>4</sup> It appears that the judge in the State Court Action did not appreciate the narrow scope of the exception.

Actions taken in violation of automatic stay are null and void.<sup>5</sup> Consequently, the orders and writ entered in the State Court Action after March 24, 2022, are of no force or effect. Although the judge in the State Court Action has already ruled that the automatic stay does not apply, this Court is not bound by that ruling. I follow Judge James Sacca’s well-reasoned opinion in *In re Cole*<sup>6</sup> holding that the Rooker-Feldman doctrine does not bar a bankruptcy court from making an independent determination regarding the application of the automatic stay.

Accordingly, it is

**ORDERED** that the Motion is GRANTED. The orders entered in the State Court Action granting a default and a default judgment are void and without effect, as is the writ of possession – all having been entered post-petition in violation of the automatic stay.<sup>7</sup>

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<sup>3</sup> 11 U.S.C. § 362(b)(22) (emphasis added).

<sup>4</sup> This is not a case in which the post-petition entry of a state court judgment was a mere ministerial act following a ruling made at a pre-petition hearing.

<sup>5</sup> *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1308 (11th Cir. 1982).

<sup>6</sup> See *Southwest Airlines Co. v. Tidewater Finance Co. (In re Cole)*, 552 B.R. 903, 908 (Bankr. N.D. Ga. 2016) and cases cited therein. An exception in bankruptcy cases to the general rule that judgments determining jurisdiction should be corrected through direct review, not collateral attack, is appropriate because erroneous decisions by state courts as to the application of the automatic stay are *void ab initio*, and further, if the automatic stay applies, the bankruptcy court has exclusive jurisdiction to modify the stay. *Id.* at 908-09 (citing *Kalb v. Feuerstein*, 308 U.S. 433 (1940)). Accord *In re Goodson*, 2018 WL 722461 \*11 (Bankr. N.D. Ala. Feb. 5, 2018); *In re Long*, 564 B.R. 750, 761 (Bankr. S.D. Ala. 2017). Cf. *In re Clarke*, 373 B.R. 769, 771 (Bankr. S.D. Fla. 2006) (Rooker-Feldman does not abrogate bankruptcy court’s authority to enforce automatic stay). But see *In re Glass*, 240 B.R. 782, 787-788 (Bankr. M.D. Fla. 1999) (Proctor, J.). I respectfully disagree with my Middle District colleague and decline to follow his decision.

<sup>7</sup> Maybe it should go without saying, but for clarity’s sake, the Plaintiff in the State Court Action is advised that no further activity in that case should occur until the automatic stay is terminated by operation of law or modified by order of this Court.

The Clerk is directed to serve a copy of this order on the Debtors and opposing counsel in the State Court action by both mail and email, and shall also serve a copy on interested parties who do not receive service via CM/ECF.